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ORIGINAL**BEFORE THE ARIZONA CORPORATION COMMISSION****RECEIVED****COMMISSIONERS**

KRISTIN K. MAYES, Chairman
GARY PIERCE
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SANDRA D. KENNEDY
BOB STUMP

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

AUG 24 2009

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
TONTA CREEK UTILITY CO. FOR APPROVAL
OF THE SALE OF ITS ASSETS AND
TRANSFER OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO TONTA
CREEK WATER COMPANY LLC.

DOCKET NO. W-02784A-09-0276

DOCKET NO. W-20682A-09-0276

PROCEDURAL ORDER**BY THE COMMISSION:**

On June 1, 2009, Tonto Creek Utility Co. ("TCUC") filed with the Arizona Corporation Commission ("Commission") an application requesting Commission approval for the sale of its assets and the transfer of its Certificate of Convenience and Necessity ("CC&N") to Tonto Creek Water Company LLC ("TCWC"). Per the application, TCUC and TCWC entered into an agreement on June 1, 2009, under which TCUC will transfer all of its assets, including structures, improvements, wells, springs, pumping equipment, distribution reservoirs and standpipes, distribution mains, services, meters, tools, and miscellaneous equipment, to TCWC in return for \$15,000. The agreement states that there is a separate agreement for the transfer of ownership of Lot 23 in Tonto Creek Estates. The agreement further states that TCUC will pay all main extension agreement refunds due and all meter and service line installation charge refunds due at closing on the transaction.

On June 18, 2009, TCUC filed an affidavit of publication showing that notice of the application had been published in the *Payson Roundup* on June 5, 2009. TCUC did not provide any proof that the notice had been sent to its customers.

On July 1, 2009, the Commission's Utilities Division Staff ("Staff") issued an Insufficiency Letter along with a request for additional data.

On July 23, 2009, TCUC filed a response to the Insufficiency Letter. In the response, TCUC

1 stated that TCWC will incur no debt in the transaction, that TCWC intends to charge TCUC's current
 2 rates and charges and has no current plans for a rate increase, that the current Certified Operator will
 3 continue to operate the system, and that TCWC currently plans no changes to the operation and
 4 maintenance of the system.

5 On August 21, 2009, Staff issued a Sufficiency Letter stating that TCUC's application has
 6 met the sufficiency requirements outlined in the Arizona Administrative Code ("A.A.C.").

7 It is now appropriate to schedule a hearing and to establish other procedural requirements and
 8 deadlines in this matter.

9 IT IS THEREFORE ORDERED that a **hearing** in this matter shall commence on **October 27,**
 10 **2009, at 10:00 a.m.,** or as soon thereafter as is practicable, in Hearing Room #1 at the Commission's
 11 offices, 1200 West Washington Street, Phoenix, Arizona 85007.

12 IT IS FURTHER ORDERED that **TCUC and TCWC** shall each file, by **September 14,**
 13 **2009,** a Notice of Appearance of Counsel or a Resolution specifically authorizing an officer or
 14 employee, as applicable, to represent it before the Commission in this matter as permitted under
 15 A.R.S. § 40-243(B).

16 IT IS FURTHER ORDERED that **TCUC** shall provide public notice of the application and
 17 hearing in this matter, in the following form and style, with the heading in no less than 12-point bold
 18 type and the body in no less than 10-point regular type:

19 **IN THE MATTER OF THE APPLICATION OF TONTO CREEK**
 20 **UTILITY CO. FOR APPROVAL OF THE SALE OF ITS ASSETS AND**
 21 **TRANSFER OF ITS CERTIFICATE OF CONVENIENCE AND**
 22 **NECESSITY TO TONTO CREEK WATER COMPANY LLC**
(Docket No. W-02784A-09-0276 et al.)

23 **Summary**

24 On June 2, 2009, Tonto Creek Utility Co. ("TCUC") filed with the Arizona
 25 Corporation Commission ("Commission") an application for approval of the sale of its
 26 assets and the transfer of its Certificate of Convenience and Necessity ("CC&N") to
 27 Tonto Creek Water Company LLC ("TCWC"). Per the application, TCUC and
 28 TCWC entered into an agreement on June 1, 2009, under which TCUC will transfer all
 of its assets to TCWC in return for \$15,000. The agreement states that there is a
 separate agreement for the transfer of ownership of Lot 23 in Tonto Creek Estates.
 The agreement states that, at closing on the transaction, TCUC will pay all main
 extension agreement refunds due and all meter and service line installation charge
 refunds due. TCUC has asserted that TCWC will charge customers the same rates and
 charges currently assessed by TCUC, that the current Certified Operator will continue

1 to operate the system, and that TCWC currently plans no changes to the operation and
2 maintenance of the system.

3 The Commission's Utilities Division Staff ("Staff") is in the process of analyzing the
4 application and has not yet made any recommendations in this matter. The
5 Commission is not bound by the proposals made by TCUC, TCWC, Staff, or any
6 intervenors. The Commission will determine whether to approve the sale of assets and
7 CC&N transfer based on the evidence received through an evidentiary hearing in this
8 matter.

9 **If You Are a TCUC Customer**

10 If the sale of assets and CC&N transfer are approved, TCWC will be the exclusive
11 provider of water utility service to your area. TCWC is under the jurisdiction of the
12 Commission. TCWC's address is 4486 East Ford Avenue, Gilbert, AZ 85234. Phone:
13 480-664-0220.

14 If you have a claim against TCUC, such as a claim for refund of a security deposit or
15 service line and meter installation charges or for refund on a main extension
16 agreement, and you have not been contacted by TCUC regarding your claim, you must
17 present your claim to TCUC by **October 15, 2009**. Direct your claim to TCUC at
18 HC2 Box 94G, Payson, AZ 85541. Phone: 928-478-4384.

19 **How You Can View or Obtain a Copy of the Application and Other Documents**

20 Copies of the application and the other documents filed in this matter are available at
21 TCUC's offices [**COMPANY INSERT ADDRESS HERE**]; at the Commission's
22 Docket Control Center at 1200 West Washington, Phoenix, Arizona, for public
23 inspection during regular business hours; and on the Internet via the Commission's
24 website (www.azcc.gov) using the e-Docket function.

25 **Arizona Corporation Commission Public Hearing Information**

26 The Commission will hold a **hearing** in this matter beginning on **October 27, 2009**, at
27 **10:00 a.m.**, in Hearing Room #1 at the Commission's offices, 1200 West Washington
28 Street, Phoenix, Arizona. Public comments will be taken on the first day of the
hearing. Written public comments may be submitted by mailing a letter referencing
Docket No. W-02784A-09-0276 et al. to Arizona Corporation Commission, Consumer
Services Section, 1200 West Washington, Phoenix, AZ 85007, or by e-mail. For a
form to use and instructions on how to e-mail comments to the Commission, go to
http://www.azcc.gov/divisions/utilities/forms/public_comment.pdf. If you require
assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-
542-4251.

29 **About Intervention**

30 Any person or entity entitled by law to intervene and having a direct and substantial
31 interest in the matter will be permitted to intervene. If you desire to intervene, you
32 must file a written motion to intervene with the Commission no later than **October 15,**
33 **2009**. You must send a copy of the motion to intervene to TCUC and TCWC, or to
34 their counsel, and to all parties of record. Your motion to intervene must contain the
35 following:

- 36 1. Your name, address, and telephone number and the name, address, and
37 telephone number of any person upon whom service of documents is to be
38 made, if not yourself;
- 39 2. A short statement of your interest in the proceeding (e.g., a customer of TCUC,
etc.); and

3. A statement certifying that you have mailed a copy of the motion to intervene to TCUC and TCWC, or their counsel, and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before October 15, 2009. If representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor's obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and providing public comment on the application or from filing written comments in the docket for the case.

ADA/Equal Access Information

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter and request this document in an alternative format by contacting the ADA Coordinator, Shaylin Bernal, at sabernal@azcc.gov, voice phone number (602) 542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that TCUC shall, by **September 24, 2009**, mail a copy of the above notice to each TCUC customer, by first-class U.S. Mail, and cause the above notice to be published in a newspaper of general circulation in its service area.

IT IS FURTHER ORDERED that TCUC shall file **certification of mailing and publication** as soon as practicable after mailing and publication has been completed, but no later than **October 8, 2009**.

IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication of same, notwithstanding the failure of an individual to read or receive the notice.

IT IS FURTHER ORDERED that Staff shall file its **Staff Report** and associated exhibits to be presented at hearing by **October 8, 2009**.

IT IS FURTHER ORDERED that any **objection or response to the Staff Report** shall be made in writing and filed by **October 20, 2009**.

IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-105, except that all motions to intervene must be filed by **October 15, 2009**.

IT IS FURTHER ORDERED that any objections to motions to intervene shall be filed by **October 21, 2009**.

1 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
2 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
3 *pro hac vice*.

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized
5 Communications) applies to this matter and shall remain in effect until the Commission's Decision in
6 this matter is final and non-appealable.

7 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
8 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

9 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
10 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

11 DATED this 24th day of August, 2009.

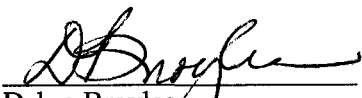
12
13 
14 SARAH N. HARPRING
15 ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed/delivered
17 this 24th day of August, 2009, to:

18 Jerry Fisher, President
19 TONTO CREEK UTILITY CO.
20 HC 2 Box 94G
21 Payson, AZ 85541

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

22 Julie A. Rea, President and General Manager
23 TONTO CREEK WATER CO. LLC
24 4486 East Ford Avenue
25 Gilbert, AZ 85234

By: 
Debra Broyles
Secretary to Sarah N. Harpring

26 Janice Alward, Chief Counsel
27 Legal Division
28 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Steve Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007